

Opinion No. 49-5233

August 1, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Alicia Romero Secretary of State Santa Fe, New Mexico

{*68} In reference to the question presented by you and the representative of the Valliant Printing Company of Albuquerque, New Mexico as to the form of the ballots on the proposed constitutional amendments to be submitted to the electors of the State at large on September 20, 1949, and as to your general authority in the preparation of the ballots for the special election.

In view of the fact that Attorney General's Opinion No. 4856, 1945-1946 considered chiefly the questions of preparation, printing and form arising from the submission of constitutional amendments at general elections, it now becomes necessary for this office to consider the law as applicable to constitutional amendments submitted to the electorate at special elections.

It is to be noted that the Attorney General in the closing paragraph of Opinion No. 4856, dated February 15, 1946, stated:

"What has been said above applies only to constitutional amendments submitted at a general election. The above mentioned sections (§ 56-402, 56-403, 56-404, 56-405, 56-406, 56-407, 56-408, and 56-409) would remain in full force and effect if the constitutional amendment or other question were submitted at a special election."

This opinion, therefore, is not inconsistent or contrary to Opinion No. 4856, but merely supplements the former opinion by considering similar questions presented by the holding of a special election.

1. Should the Secretary of State have all of the ballots printed and transmit them to the county clerks for proper distribution, or should the provision of the ballots be left to the county clerks?
2. Must the ballots be numbered?
3. Should the proposed amendments all be printed on one ballot, or should each proposed amendment be printed on a separate ballot?

In answer to your first question, let me quote § 56-403, New Mexico Statutes Annotated, 1941 Compilation:

"The secretary of state shall provide printed ballots for the use of the electors in all cases where constitutional amendments or other questions to be submitted to the

electors of the entire state are involved, and shall transmit the same to the county clerks, who shall deliver them to the election officers as election supplies are delivered under the provisions of this act (chapter). Such ballots shall bear on the back thereof a facsimile impression of the signature of the secretary of state."

It is, therefore, the opinion of this office, in the case of a Special Election for the submission of proposed constitutional amendments to the electors, that the Secretary of state shall provide printed ballots for the use of the electors.

In answer to your second question, let me quote § 56-405, New Mexico Statutes Annotated, 1941 Compilation:

"All ballots on proposed constitutional amendments shall have printed thereon in full, {*69} in both English and Spanish, the joint resolution proposing such constitutional amendment; and below such printed proposed amendment there shall be printed on such ballot two (2) one-quarter inch blank squares and opposite to one of such blank squares shall be printed in both English and Spanish the words "FOR THE AMENDMENT"; and opposite the other blank square shall be printed in both languages the words "AGAINST THE AMENDMENT"; and any elector desiring to vote in favor of such amendment shall mark his ballot with a cross in the blank square opposite the words "FOR THE AMENDMENT"; and any elector desiring to vote against the amendment shall mark his ballot with a cross in the blank square opposite the words "AGAINST THE AMENDMENT"; and such ballot shall have printed across the top thereof the following: "Instructions to voters. If you desire to vote for the amendment mark X in square opposite the words "FOR THE AMENDMENT". If you desire to vote against the amendment, mark X in the square opposite the words 'AGAINST THE AMENDMENT'."

The section above quoted is the exact form of the ballot. Nothing can be inferred or implied. You will note that there is no statement in the law referring to the numbering of the ballots and in the absence of express authority in the law, you have no authority to have the ballots numbered by the printer.

It is, therefore, the opinion of this office that the ballots, upon which are printed the proposed amendments to be used in the Special Election, should not be numbered.

In consideration of your third question, permit me to quote § 56-407, New Mexico Statutes Annotated, 1941 Compilation:

"If there should be more than one proposed constitutional amendment or other question submitted at the same election each of such proposed constitutional amendments or other questions shall be printed upon separate ballots."

It is, therefore, the opinion of this office that each proposed constitutional amendment submitted to the electors at the Special Election to be held on September 20, 1949, should be printed upon a separate ballot.